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

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

|                        |  |
|------------------------|--|
| Proceeding             | 91158189   |
| Party                  | Plaintiff<br>Intec Telecom Systems PLC & ADC Telecomm<br>ADC Telecommunications, Inc.<br>12501 Whitewater Drive<br>Minnetonka, MN 55343                                  |
| Correspondence Address | SCOTT W. JOHNSTON<br>MERCHANT & GOULD PC<br>PO BOX 2910<br>MINNEAPOLIS, MN 55402-0910<br>UNITED STATES<br>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 enf setlmt agmt.PDF ( 67 pages )(414914 bytes )  |



On March 1, 2005, Intec filed a motion to join the action. Intec's motion was granted on April 26, 2005. On or about June 2005, 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 Order granting Intec's Motion to Join as Opposing Party, the proceedings were set to resume on December 18, 2005 with the discovery period closing on February 16, 2006. 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.

During the weeks immediately following suspension of the proceedings, the parties engaged in settlement discussions. These discussions dealt with the material terms of the settlement. For several months, the parties went back and forth on the different terms. On February 13, 2006, counsel for Intec prepared a draft compromise agreement containing the material terms reached by the parties and emailed the draft to counsel for Avaya. (See Email from John McElwaine to Kenneth Chan dated February 13, 2006, attached as Exhibit A; Draft Consent Agreement is attached as Exhibit B). On February 14, 2006, counsel for Avaya responded that the draft Consent Agreement was acceptable and indicated a need to make three "non-substantive changes." (See Email from Kenneth Chan to John McElwaine dated February 14, 2006, attached as Exhibit C). In addition, on this date, Avaya notified its attorneys that the parties had reached an agreement as to the material terms of the settlement. (See Email from Kenneth Chan to Kelly Garrone and John McElwaine dated February 14, 2006, attached as Exhibit D). Counsel for Intec confirmed Avaya's statement that the parties had settled, adding

that it too would make a minor revision to how Intec's corporate name had been designated in the parties' agreement. (See Email from John McElwaine to Kenneth Chan dated February 14, 2006, attached as Exhibit E). On February 28, 2006, Counsel for Avaya requested a status on the parties' settlement agreement. (See Email from Kenneth Chan to John McElwaine dated February 28, 2006, attached as Exhibit F). In response, counsel for Intec responded that Intec had approved the material terms of the contract and that counsel for Intec would forward Avaya a finalized agreement the following week. (See Email from John McElwaine to Kenneth Chan dated February 28, 2006, attached as Exhibit G).

On March 8, 2006, counsel for Intec sent counsel for Avaya, via electronic email, a finalized agreement which further documented and memorialized the terms discussed by the parties and which had been agreed to. (See Email from John McElwaine to Kenneth Chan dated March 8, 2006 attached as Exhibit H; Settlement Agreement is attached hereto as Exhibit I). On April 5, 2006, to counsel for Intec sent an email to Avaya requesting an executed settlement agreement. (Email from John McElwaine to Kenneth Chan dated April 5, 2006 is attached as Exhibit J).

Avaya responded to Intec's request for an executed settlement agreement 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. (Email from Kenneth Chan to John McElwaine dated April 5, 2006 is attached as Exhibit K). A few hours later, Avaya sent counsel for Intec 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 Exhibit L for second Email from Kenneth Chan to John McElwaine dated April 5, 2006).

On April 7, 2006, counsel for Intec sent an email to Avaya requesting for an update on the settlement. (Email from John McElwaine to Kenneth Chan dated April 7, 2006 is attached as Exhibit M). As of April 10, 2006, Intec had still not received the executed settlement agreements and the undersigned sent an email requesting an update on the settlement agreement. (Email from John McElwaine to Kenneth Chan dated April 10, 2006 is attached as Exhibit N). Intec, in a separate email to counsel for Avaya, indicated that there was a need to extend discovery in order to allow for Avaya to make its "minor revisions" to the settlement agreement. (See Exhibit O for second Email from John McElwaine to Kenneth Chan dated April 10, 2006). On April 13, 2006, the undersigned filed a motion to suspend the proceedings. On April 19, 2006, the Board, instead, suspended the proceedings until October 18, 2006.

On September 4, 2006, the undersigned contacted counsel for Avaya, via email, inquiring about the status of the executed settlement agreement. (Email dated September 4, 2006 from John McElwaine to Kenneth Chan is attached as Exhibit P). Counsel for Intec received no response from Avaya. On October 17, 2006, counsel for Intec called Avaya to request an update on the settlement agreement. Via voice mail, counsel for Intec requested the executed settlement agreement. Counsel for Intec 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 return the call. On October 20, 2006, counsel for Intec made another attempt to contact Avaya about the settlement agreement. Counsel for Intec spoke with Mr. Robert Smith, Esquire, Avaya's counsel of record, and requested an executed settlement agreement. As of filing, Avaya has not responded submitted a finalized settlement agreement.

Based on the foregoing facts, and as will be more fully discussed below, Intec moves this Court to enforce the settlement agreement entered into by the parties.

### **ARGUMENTS**

It is well-settled law that settlement agreements between parties involved in a dispute are enforceable. See generally, Aro Corp. v. Allied Witan Co., 531 F.2d 1368, 1372 (6th Cir.1976). In fact, "there is an overriding public policy in favor of encouraging settlement of litigation and holding parties to the terms of their agreements." Silicon Image, Inc. v. Genesis Microchip, Inc., 271 F. Supp. 2d 840, 846 (E.D. Va. 2003) (Aro Corp. v. Allied Witan Co., 531 F.2d 1368, 1372 (6th Cir. 1976)); see also Hemstreet v. Spiegel, Inc., 851 F.2d 348, 350 (Fed. Cir. 1988) ("The law strongly favors settlement of litigation, and there is a compelling public interest and policy in upholding and enforcing settlement agreements voluntarily entered into"). Public policy also imposes an obligation on the parties to settle there disputes whenever possible. Silicon Image, 271 F. Supp. 2d at 846.

Settlement agreements are contractual in nature and thus a motion to enforce a settlement agreement requires the application of general contract principles. United States v. ITT Continental Baking Co., 420 U.S. 223, 238 (1975); Omega Eng'r, Inc. v. Omega, S.A., 432 F.3d 437, 443 (2nd Cir. 2004); Hensley v. Alcon Labs., 277 F.3d 535, 540 (4th Cir. 2002). A court has the authority to enforce a settlement in a case pending before it. Ozyagcilar v. Davis, 701 F.2d 306, 308 (4th Cir. 1983). Adjudicatory bodies such as this Board also have inherent authority and duty to enforce settlement agreements pursuant to their equity power and are bound to follow the precedents established by district courts for interpretation of these types of agreements. See e.g. Valentino Couture, Inc. v. Vantage Custom Classics, Inc., 2003 TTAB LEXIS 413, (TTAB 2003) ("The Board can give effect to a settlement agreement to the extent

that the agreement is relevant to issues properly before the Board"); Unique Industries, Inc. v. Dinucci, 1998 TTAB LEXIS 277 (1998). Both oral and written settlement agreements are enforceable. Alexander v. Industries of the Blind, 901 F.2d 40, 41 (4th Cir. 1990). Moreover, "the actual signing of the settlement agreement is a mere formality and failure to do so does not nullify the validity of the agreement." Lomax v. AT&T, 1993 U.S. App. LEXIS 4740, \*11-12 (4th Cir. S.C. Mar. 10, 1993) (citing Reed v. United States, 717 F. Supp. 1511 (S.D. Fla. 1988), aff'd, 891 F.2d 878, (11th Cir. 1990)).

In addition, even though this action involves federal trademark claims, the terms of the contract can be interpreted either pursuant to the well-established contract principles of the laws of the forum state. Gamewell Mfg., Inc. v. HVAC Supply, Inc., 715 F.2d 112, 115 (4th Cir. 1983); Sadighi v. Daghighfekr, 66 F.Supp.2d 752, 759 (D.S.C. 1999). In this case, the contract was formed in South Carolina and the agreement states the contract is governed by South Carolina law. Therefore, the Board should look to South Carolina contract law to determine whether the parties' settlement agreement is enforceable.<sup>1</sup>

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<sup>1</sup> Even if the Board were to decide to look to the federal common law instead of South Carolina law, the applicable contract principles remain the same. As explained by the Fourth Circuit Court of Appeals in Gamewell Mfg., Inc. v. HVAC Supply, Inc., a federal court "is free to choose any rule it deems appropriate, and it may look for guidance to other federal contexts, to what it perceives to be first principles, to considerations of equity and convenience, or to the law of the forum state." 715 F.2d at 115 (quoting 19 Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 4514, 457 (1996)). Thus, even though federal common law may be used to determine whether a contract is enforceable,

[this] does not mean necessarily that the federal courts should or will formulate an independent federal rule of law. In many cases, relevant factors may indicate that the federal courts should follow or 'adopt' the law of the forum state as the governing rule of decision, although it will be doing so as a matter of federal law. In other words, the federal courts may apply state law -- not because of any compulsion to do so . . . but because federal interests would not be impaired by doing so, state law is 'already there,' people are familiar with it, and the state rule is not inimical to federal interests.

Id. In the present case, South Carolina contract law is not inimical to federal interests.

Under South Carolina contract law, “[a] contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct.” Roberts v. Gaskins, 486 S.E.2d 771, 773 (S.C. Ct. App. 1997). Thus, when assessing whether parties have entered into an enforceable settlement agreement, the Court looks to “objectively manifested intentions of the parties.” Moore v. Beaufort County, North Carolina, 936 F.2d 159, 162 (4th Cir.1991); Sadighi, 66 F.Supp.2d at 760; see also Valentino Couture, 2003 TTAB LEXIS 413, \*10-11. Specifically, it must be shown that there was an offer, an acceptance, and valuable consideration. See Roberts, 486 S.E.2d at 773; Carolina Amusement Co. v. Connecticut Nat'l Life Ins. Co., 437 S.E.2d 122, 125 (S.C. Ct. App. 1993). Moreover, the party seeking enforcement must prove that there was a meeting of the minds; in other words, there was mutual assent to be bound to the essential and material terms of the contract. See Vessell v. DPS Assocs. of Charleston, Inc., 148 F.3d 407, 410 (4th Cir.1998) (applying South Carolina law); Player v. Chandler, 382 S.E.2d 891, 893 (1989); Stanley Smith & Sons v. Limestone College, 322 S.E.2d 474, 477 (S.C. Ct. App. 1984).

An “offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it’.” Carolina Amusement Co., 437 S.E.2d at 125 (quoting Restatement (Second) of Contracts § 24 (1981)). A “meeting of minds is based upon the intent and purposes as shown by all the circumstances.” Rickborn v. Liberty Life Ins. Co., 468 S.E.2d 292, 300 (S.C. 1996). Therefore, to determine whether there was a meeting of the minds, the tribunal must look to whether there was “an objective manifestation of the [parties'] mutual assent to the essential and material terms of the contract.” Sadighi, 66 F.Supp.2d at 760; Piver v. Pender County Bd. of Educ., 835 F.2d 1076, 1083 (4th Cir. 1987), cert. denied, 487 U.S. 1206, 108 S. Ct. 2847, 101 L. Ed. 2d 885

(1988); Charbonnages De France v. Smith, 597 F.2d 406, 414 (4th Cir. 1979); see also Valentino Couture, 2003 TTAB LEXIS 413 at \*10. The intent of the parties is determined from the language used in the agreement. Valentino Couture, 2003 TTAB LEXIS at \* 10 (citations omitted).

Finally, a settlement agreement, like any other contractual agreement, must be supported by consideration. Sadighi, 66 F.Supp.2d at 760. An agreement to settle is supported by good consideration if "it is based upon a disputed or unliquidated claim and if the parties make or promise mutual concessions as a means of terminating their dispute; no additional consideration is required. Generally, anything of detriment to one side, or benefit to the other, may constitute sufficient consideration to support a settlement. The real consideration for a settlement agreement is not found in the parties' sacrifice of rights, but in the bare fact that they have settled the dispute." 15A Am Jur 2d Compromise and Settlement § 22.

Applying that framework to the present case, the Board should find that the parties have an enforceable settlement agreement since there was an offer, acceptance, a meeting of the minds, and consideration.

**I. THERE WAS AN OFFER MADE TO AVAYA.**

There was an offer by way of the settlement agreement drafted by counsel for Intec and sent to Avaya. As set forth above, the parties had reached an agreement in February 2006. (See Exhibits A, B, C, D, E, F, and G). On March 8, 2006, counsel for Intec provided counsel for Avaya a finalized agreement memorializing the terms discussed by the parties as set forth in their draft consent agreement. (See Exhibits B and H).

It is important to point out to the Board that the settlement agreement that was sent to Avaya on March 8, 2006, was a finalized version of which memorialized the terms that the

parties had been discussing from as early as June 2005 and as contained in the parties' draft consent agreement or, as counsel for Avaya phrased it "a co-existence agreement." (See e.g. Exhibits D). It was more than just a proposal of terms. The Settlement Agreement was an offer based on multiple conversations and the draft Consent Agreement. (See Exhibit B). The Settlement Agreement restated the terms pursuant to the parties' discussion regarding compromise and essentially mirrored the issues that the parties had already agreed on. Accordingly, the Settlement Agreement that Intec provided to counsel for Avaya was a manifestation of Intec's willingness "to enter into a bargain" thoroughly discussed with Avaya thereby justifying Avaya's understanding that its assent to that bargain was invited and that such assent would seal the deal. See Carolina Amusement Co., 437 S.E.2d at 125. More specifically, "the offer identifie[d] the bargained for exchange and create[d] a power of acceptance in [Avaya]." Id. Therefore, and pursuant to basic contract principles, an offer to settle was made to Avaya which was accepted.

## **II. AVAYA ACCEPTED INTEC'S OFFER.**

There was acceptance by Avaya as evidenced by Avaya's communications to both counsel for Intec and its counsel of record stating that terms of Intec's proposed settlement agreement was agreeable and that he would execute the document and return it to Intec. See e.g. Exhibits D, E, F, and G for correspondence between the parties regarding the settlement undeniably confirming that the terms of the agreement had been accepted by Avaya. (See also, Exhibit I). There is no question whatsoever that Avaya agreed to the terms of the contract. Counsel for Avaya stated, more than once, that the terms of the agreement were acceptable. See e.g. Exhibit D and I. Counsel for Avaya specifically stated with regard to the parties' finalized Settlement Agreement,

"[the] Agreement is fine. I'll execute and send it to you today." Exhibit I. In light of this indisputable evidence, this Board should find that Avaya accepted the offer made by Intec.

**III. THERE WAS A MEETING OF THE MINDS BY THE PARTIES AS EVIDENCED BY THEIR MUTUAL ASSENT TO THE TERMS OF THEIR AGREEMENT.**

There was a meeting of minds by the parties as to the material terms and conditions of the settlement agreement. Courts have said the parties must have a meeting of the minds with regard "to all essential and material terms of the agreement." Vessell v. DPS Assocs. of Charleston, Inc., 148 F.3d 407, 410 (Player v. Chandler, 382 S.E.2d 891, 893 (S.C. 1989)). In the present case, the material terms relate to the issues properly before the Board, i.e. use of the mark SINGLE VIEW and the fact that it is confusingly similar to ADC and Intec's SINGL.EVIEW mark. The settlement agreement attempts to resolve the confusion that Avaya's use of the SINGLE VIEW mark may cause amongst consumers of Intec's SINGL.EVIEW mark.

The parties gave mutual assent to the contractual terms as indicated by the email of counsel for Avaya on behalf of Avaya and in light of the fact that for almost a year the parties actively engaged in discussions and came to an agreement on how to resolve their dispute. This agreement was then memorialized into a more formal document and sent to counsel for Avaya. Arguably, there was a meeting of the minds even before the formal settlement agreement had been drafted. Whatever the case may be, Mr. Chan's email to the counsel for Intec, (See Exhibit I), confirms that there was mutual assent to their previously discussed terms and agreement. His email communication is also strong objective evidence of an intention to be bound to by the settlement agreement, notwithstanding that a later execution of a formal contract was contemplated. Sadighi, 66 F.Supp.2d at 760.

Intec anticipates that Avaya will argue that, despite Mr. Chan's email approving the terms of the contract, he sent a follow-up email stating that he needed to make some changes to the terms of the contract. However, Mr. Chan himself referred to those changes as "minor," implying that they would not affect the material terms of the contract, and promised to return the executed settlement documents to counsel for Intec within two days. Clearly, Avaya, by and through its counsel, was of the view, as was Intec, that there was nothing left to negotiate and that parties had come to an agreement as to all the material terms of their settlement agreement. Thus, this is not a case in which the intent of the parties is sharply contradicted. Instead, the credible evidence – such as the parties' correspondence and the conduct of the parties – is sufficient for this Board to draw the permissible inference that the parties had a meeting of the minds as to all the key and material terms of the agreement.

#### **IV. THERE WAS AMPLE CONSIDERATION IN SUPPORT OF THE PARTIES' AGREEMENT.**

The mere existence of the parties' agreement to compromise their dispute serves as sufficient consideration. 15A Am Jur 2d Compromise and Settlement § 22. Both parties made sacrifices of rights in order to come to an amiable resolution of the opposition action. For instance, they agreed to resolve the dispute in instead of engaging in litigation. Even so, consideration, with respect to settlement agreements, is not merely "found in the parties' sacrifice of rights." Id. The mere fact that they agreed to settle constitutes sufficient consideration. Id. Therefore, the Board must enforce the contract based on the clear, unambiguous meaning of its terms.

**CONCLUSION**

Intec respectfully moves for an order enforcing the terms of the parties' settlement agreement.

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

By: 

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November 22, 2006  
Charleston, South Carolina

**CERTIFICATE OF SERVICE**

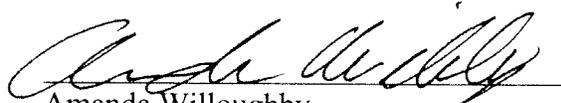
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough, L.L.P., attorneys for Applicant, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail,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

Pleadings: **INTEC'S MEMORANDUM IN SUPPORT OF ITS MOTION TO ENFORCE SETTLEMENT AGREEMENT**

Counsel Served: Kenneth Chan  
Counsel for Avaya, Inc.  
211 Mt. Airy Road – Room 3C531  
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*Counsel for ADC*

  
Amanda Willoughby  
Administrative Assistant

November 22, 2006

# EXHIBIT A

**John McElwaine**

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**From:** John McElwaine  
**Sent:** Monday, February 13, 2006 5:51 PM  
**To:** 'Chan, Kenneth (Kenneth)'  
**Subject:** Draft Consent Agreement  
**Attachments:** DRDJ01\_.DOC

Ken,

I have attached the Draft Consent Agreement embodying the terms that you and I reached. Please review and contact me with any questions or issues.

- John

# EXHIBIT B

## AGREEMENT

**THIS AGREEMENT** is made this \_\_\_\_\_ day of February, 2006, by and between Intec Telecon Systems, Inc., a limited liability 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 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 1.2.. 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 SINGLEVIEW 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**:

If to **INTEC**:

NORM HALVORSON  
301 Perimeter Center North,  
Suite 200  
Atlanta, Georgia, 30346

with a copy to:

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 C

**John McElwaine**

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**From:** Chan, Kenneth (Kenneth) [chank@avaya.com]  
**Sent:** Monday, February 13, 2006 6:22 PM  
**To:** John McElwaine  
**Subject:** RE: Draft Consent Agreement  
**Attachments:** DRDJ01\_.DOC

John,

The agreement is fine; I've made 3 non-substantive changes. If these changes are okay with you, I can sign the agreement and send it over. Please let me know.

Thanks,

Ken

---

**From:** John McElwaine [mailto:john.mcelwaine@nelsonmullins.com]  
**Sent:** Monday, February 13, 2006 5:51 PM  
**To:** Chan, Kenneth (Kenneth)  
**Subject:** Draft Consent Agreement

Ken,

I have attached the Draft Consent Agreement embodying the terms that you and I reached. Please review and contact me with any questions or issues.

- John

---

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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.

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11/22/2006

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 D

**John McElwaine**

---

**From:** Chan, Kenneth (Kenneth) [chank@avaya.com]  
**Sent:** Tuesday, February 14, 2006 5:38 PM  
**To:** Garrone, Kelly J.; John McElwaine  
**Cc:** Matwiejczyk, Tadeusz (Ted); Smith, Robert; Popovic, Deborah A.  
**Subject:** RE: SINGLE VIEW opposition

Hi Kelly,

I have reached agreement with Intec's counsel, Mr. John McElwain, on a co-existence arrangement. However, we may not be able to execute the agreement prior to February 16. Please file a 60-day extension to the discovery period.

Thank you,

Ken

---

**From:** Garrone, Kelly J. [mailto:KGarrone@McCarter.com]  
**Sent:** Tuesday, February 14, 2006 2:01 PM  
**To:** Chan, Kenneth (Kenneth)  
**Cc:** Matwiejczyk, Tadeusz (Ted); Smith, Robert; Popovic, Deborah A.  
**Subject:** RE: SINGLE VIEW opposition

Hi Ken -

I just wanted to remind you that the discovery deadline in the SINGLE VIEW opposition is **Thursday, February 16, 2006**. Please let me know if you have received consent from Intec to our filing a request for a 60 day extension (as discussed in your email below). Thanks for your help.

Regards,

Kelly

Kelly Garrone  
McCarter & English, LLP  
973-639-5954

# EXHIBIT E

**John McElwaine**

---

**From:** John McElwaine  
**Sent:** Tuesday, February 14, 2006 5:50 PM  
**To:** 'Chan, Kenneth (Kenneth)'  
**Subject:** RE: SINGLE VIEW opposition

Ken,

My client has a few revisions to his corporate name and that should be it. We are supposed to talk in the next day or so.

- John

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

**From:** Chan, Kenneth (Kenneth) [mailto:chank@avaya.com]  
**Sent:** Tuesday, February 14, 2006 5:38 PM  
**To:** Garrone, Kelly J.; John McElwaine  
**Cc:** Matwiejczyk, Tadeusz (Ted); Smith, Robert; Popovic, Deborah A.  
**Subject:** RE: SINGLE VIEW opposition

Hi Kelly,

I have reached agreement with Intec's counsel, Mr. John McElwain, on a co-existence arrangement. However, we may not be able to execute the agreement prior to February 16. Please file a 60-day extension to the discovery period.

Thank you,

Ken

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**From:** Garrone, Kelly J. [mailto:KGarrone@McCarter.com]  
**Sent:** Tuesday, February 14, 2006 2:01 PM  
**To:** Chan, Kenneth (Kenneth)  
**Cc:** Matwiejczyk, Tadeusz (Ted); Smith, Robert; Popovic, Deborah A.  
**Subject:** RE: SINGLE VIEW opposition

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Regards,

Kelly

Kelly Garrone  
McCarter & English, LLP

973-639-5954

# EXHIBIT F

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

From: Chan, Kenneth (Kenneth) <chank@avaya.com>  
To: John McElwaine  
Sent: Tue Feb 28 17:38:29 2006  
Subject: RE: SINGLE VIEW opposition

Hi John,

How are we doing with the co-existence agreement? Any chance we can get it done this week?

Ken

---

From: John McElwaine [mailto:john.mcelwaine@nelsonmullins.com]  
Sent: Tuesday, February 14, 2006 5:50 PM  
To: Chan, Kenneth (Kenneth)  
Subject: RE: SINGLE VIEW opposition

Ken,

My client has a few revisions to his corporate name and that should be it. We are supposed to talk in the next day or so.

- John

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

From: Chan, Kenneth (Kenneth) [mailto:chank@avaya.com]  
Sent: Tuesday, February 14, 2006 5:38 PM  
To: Garrone, Kelly J.; John McElwaine  
Cc: Matwiejczyk, Tadeusz (Ted); Smith, Robert; Popovic, Deborah A.  
Subject: RE: SINGLE VIEW opposition

Hi Kelly,

I have reached agreement with Intec's counsel, Mr. John McElwain, on a co-existence arrangement. However, we may not be able to execute the agreement prior to February 16. Please file a 60-day extension to the discovery period.

Thank you,

Ken

---

From: Garrone, Kelly J. [mailto:KGarrone@McCarter.com]

# EXHIBIT G

## John McElwaine

---

**From:** John McElwaine  
**Sent:** Tuesday, February 28, 2006 5:42 PM  
**To:** 'chank@avaya.com'  
**Subject:** Re: SINGLE VIEW opposition

Ken,

I just today got approval from my client. I have a couple of revisions concerning properly identifying my client. I am in a TTAB trial all this week so the most likely time that I should have a finalized agreement is early next week.

John

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

**From:** Chan, Kenneth (Kenneth) <chank@avaya.com>  
**To:** John McElwaine  
**Sent:** Tue Feb 28 17:38:29 2006  
**Subject:** RE: SINGLE VIEW opposition

Hi John,

How are we doing with the co-existence agreement? Any chance we can get it done this week?

Ken

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**From:** John McElwaine [mailto:john.mcelwaine@nelsonmullins.com]  
**Sent:** Tuesday, February 14, 2006 5:50 PM  
**To:** Chan, Kenneth (Kenneth)  
**Subject:** RE: SINGLE VIEW opposition

Ken,

My client has a few revisions to his corporate name and that should be it. We are supposed to talk in the next day or so.

- John

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

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**Sent:** Tuesday, February 14, 2006 5:38 PM  
**To:** Garrone, Kelly J.; John McElwaine  
**Cc:** Matwiejczyk, Tadeusz (Ted); Smith, Robert; Popovic, Deborah A.  
**Subject:** RE: SINGLE VIEW opposition

Hi Kelly,

I have reached agreement with Intec's counsel, Mr. John McElwain, on a co-existence arrangement. However, we may not be able to execute the agreement prior to February 16. Please file a 60-day extension to the discovery period.

Thank you,

Ken

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**From:** Garrone, Kelly J. [mailto:KGarrone@McCarter.com]

Sent: Tuesday, February 14, 2006 2:01 PM  
To: Chan, Kenneth (Kenneth)  
Cc: Matwiejczyk, Tadeusz (Ted); Smith, Robert; Popovic, Deborah A.  
Subject: RE: SINGLE VIEW opposition

Hi Ken -

I just wanted to remind you that the discovery deadline in the SINGLE VIEW opposition is Thursday, February 16, 2006. Please let me know if you have received consent from Intec to our filing a request for a 60 day extension (as discussed in your email below). Thanks for your help.

Regards,

Kelly

Kelly Garrone  
McCarter & English, LLP  
973-639-5954

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=====

# EXHIBIT H

**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 I

## 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 J

**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 K

**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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**To:** 'chank@avaya.com'  
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- John

---

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11/22/2006

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=====

# EXHIBIT L

**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

Ken,

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Thanks, John

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

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

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- John

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=====

# EXHIBIT M

**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

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

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**From:** Chan, Kenneth (Kenneth)  
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=====

# EXHIBIT N

**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).

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Ken

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

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Ken

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**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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Thanks, John

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**Subject:** Settlement Agreement

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# EXHIBIT O

**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

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

=====

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# EXHIBIT P

**Amanda Willoughby**

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**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).

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

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

---

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