

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Mailed: August 3, 2007

Opposition No. 91158189

Intec Telecom Systems PLC &  
ADC Telecomm

v.

Avaya Inc.

Cheryl Goodman, Interlocutory Attorney:

This case now comes up on opposer's motion, filed November 22, 2006, to compel discovery, and its motion, filed November 22, 2006, to enforce settlement agreement. Applicant has filed no response to either motion.

Turning first to the motion to compel and to deem its request for admissions admitted, the Board finds that the motion is procedurally deficient as no copies of the discovery requests have been included with the motion. It is noted that a list of exhibits makes no reference to any discovery requests or requests for admission. See Trademark Rule 2.120(e).

In view thereof, the motion to compel is denied.

Turning next to its motion to enforce settlement agreement, opposer seeks enforcement of the parties' unexecuted settlement agreement on the "grounds that there was an offer, acceptance and consideration" making the

unexecuted settlement agreement an "enforceable contract between the parties."

The issue the Board must resolve is whether the parties should be bound to the terms and conditions of the unexecuted draft settlement agreement. The Board does not have the power to impose a settlement agreement when the parties did not agree on it. See *Exxon Corporation v. Motorgas Oil & Refining Corp.*, 219 USPQ 440 (TTAB 1983).

Although opposer asserted that the parties had agreed on the all terms of the agreement, it is clear that the parties had not agreed on all terms in view of applicant's counsel's e-mail of April 5, 2006 stating that "Having thought through implementation of our agreement I will need to propose a few minor changes." Despite opposer's attempts to obtain these proposals, none of has been forthcoming from applicant. Moreover, it is clear that both parties contemplated executing the settlement agreement before settlement was considered finalized as this is apparent through the various e-mails which referenced executing the settlement agreement and through the terms of the settlement agreement. See Section 5.2 of the Agreement ("no cancellation, modification, amendment, deletion, addition or other change in this Agreement or any provision hereof . . . shall be effective for any purpose unless specifically set forth in writing signed by the party to be bound thereby.")

and Section 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 this Agreement has been duly authorized and executed by the party . . . ") Thus the Board finds that the parties did not intend to be bound by the agreement until all outstanding terms were agreed to and the parties had executed the agreements. See *Wang Laboratories, Inc. v. Applied Computer Sciences, Inc.*, 958 F.2d 355, 359 (Fed. Cir. 1992). (The parties "are corporations that are sophisticated in contractual matters and are represented by competent counsel. They engaged in extended negotiations over the multi-page the settlement agreement with blank lines for the parties' signatures. Under these circumstances, companies do not intend to be bound until such written agreements are executed by authorized representatives.")

Inasmuch as the Board finds that the parties intended that the agreement would be binding only with execution of the documents by both parties and that the parties never in fact reached agreement on the final terms and conditions of a settlement, the Board finds that the unexecuted draft settlement agreement is not an enforceable contract. In view thereof, opposer's motion to enforce settlement agreement is denied.

Proceedings are resumed.

Discovery and trial dates are reset as follows:

DISCOVERY PERIOD TO CLOSE:	<b>October 13, 2007</b>
30-day testimony period for party in position of plaintiff to close:	<b>January 11, 2008</b>
30-day testimony period for party in position of defendant to close:	<b>March 11, 2008</b>
15-day rebuttal testimony period for party in position of plaintiff to close:	<b>April 25, 2008</b>

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.