



Avaya Claims against Continuant Dismissed

Communications systems manufacturer Avaya, in a surprise move, has withdrawn its principal claims in ongoing litigation between it and independent voice and data maintenance provider Continuant (www.continuant.com).

As a result, jurors in the upcoming trial will no longer hear claims that Continuant tortiously interfered with Avaya's contracts with Avaya PBX owners by performing maintenance on its customers' Avaya-brand PBX systems; violated the Digital Millennium Copyright Act (DMCA); and misappropriated Avaya's trade secrets—claims the Washington state company spent seven years refuting..

On September 3, 2013, the court issued an order dismissing with prejudice those three key claims as well as claims for trade libel and false advertising that Avaya previously decided to not pursue at trial.

In November 2011, the court also granted summary judgment dismissing most of Avaya's DMCA claim, including a dismissal with prejudice two of Avaya's claims against Continuant based on the DMCA. The most recent move related to the DMCA means that the third and final DMCA claim has now also been dismissed.

Other claims have also dropped away during the seven-year pretrial litigation. Two years ago, Avaya dropped all its claims relating to Continuant's installation and maintenance of Avaya-brand Predictive Dialer Systems (PDS), also known as Proactive Contact. After Avaya advised of its intention to drop the PDS claims, the court entered an order on November 14, 2011 dismissing with prejudice all of Avaya's claims to the extent they related to PDS.

"For years, Avaya has contended that it has a contractual right to lock its customers out of the maintenance commands on their own systems, claiming that access to maintenance commands was Avaya's 'trade secret,'" said Bruce Shelby, Continuant Co-founder and Chief Sales Officer. "Now, just days before trial, Avaya appears to be admitting that its 'trade secrets' claim has no merit and that the contracts it had with our customers did not prohibit the customers from contracting with the vendor of their choice."

Continuant Co-founder and Chief Executive Officer Doug Graham said, "It is an outrage that Avaya has been able to use its sizeable legal budget to tie up Continuant and the federal court system by making us defend ourselves against these meritless claims over the course of the last seven years at great expense and with little recourse. We will now aggressively prosecute our counterclaims, which all have merit. We look forward to having our day in court."

Jury selection begins today, September 9, 2013.