

Battery Co., Rival Lob Dueling Sanction Bids In \$100M IP Fight

By **Dorothy Atkins**

Law360 (November 1, 2019, 8:09 PM EDT) -- A \$100 million legal battle over trade secrets between a company that helps computer centers stay online with uninterrupted power and its former business partner heated up in Illinois federal court Thursday, with the parties filing back-to-back dueling sanctions bids that accuse the other side of stonewalling discovery efforts.

The sanctions motions are the latest development in a hotly contested legal fight that began in **September 2018** when LiiON LLC sued private equity-backed Vertiv Group Corp. and its related entities, claiming it breached their nondisclosure agreement and misappropriated its trade secrets by using its proprietary technology in its own products and then sharing it with LiiON's rival, Samsung.

Vertiv filed its counterclaims against LiiON in January and both sides filed dueling **motions to dismiss**. In March, a district judge trimmed some of LiiON's claims, and **in April**, the judge refused to toss Vertiv's counterclaims.

Fact discovery closed in July, but the parties informed the court they needed until Dec. 20 to resolve outstanding discovery disputes. The judge refused to reopen fact discovery, but she gave them until Nov. 15 to file sanctions motions, prompting Vertiv to file an 18-page sanctions bid Thursday that asked the judge to toss LiiON's lawsuit for good and impose monetary sanctions against it for its alleged intentional discovery misconduct.

Vertiv accused LiiON and its counsel of allowing witnesses to self-select which documents to produce in discovery and intentionally misrepresenting how many documents it needed to produce. Vertiv said they also only collected discovery from a small group of people and that LiiON misrepresented facts in its responses to interrogatories, which were later contradicted by its own witnesses.

To make matters worse, Vertiv argued, LiiON and its attorneys have delayed discovery throughout the litigation, missing deadlines and improperly designating all of LiiON's document production as "highly confidential" or "attorney eyes only."

"LiiON's pattern of discovery misconduct is not run-of-the-mill," the motion said. "It is extraordinary in volume and breadth. The punishment must fit the crime."

Vertiv said the misconduct warrants a dismissal, but if the judge disagrees, Vertiv asked that the court prohibit LiiON from introducing evidence on certain allegations and issue adverse inference jury instructions.

Within hours of Vertiv's filing, LiiON's counsel filed their own sanctions motion, asking the court to sanction Vertiv for missing a March 11 deadline to produce documents by four days and handing over 1,200 pages hours before LiiON was set to depose Vertiv witnesses. The company argued that Vertiv shouldn't be allowed to use any of the documents it handed over late.

"Defendant's dilatory conduct in the timing of the eighth production suggests that this was a deliberate tactic to surprise and disorient counsel approximately 12 hours prior to the depositions of two key Vertiv employees," the motion said.

Counsel and representatives for the parties didn't immediately respond Friday to requests for comment.

LiiON is represented James A. Karamanis and Kenneth A. Nazarian of Barney & Karamanis LLP.

Vertiv Group and its related entities are represented by J. Erik Connolly, Nicole E. Wrigley, Christopher J. Letkewicz and Kate Watson Moss of Benesch Friedlander Coplan & Aronoff LLP.

The case is LiiON LLC v. Vertiv Group Corp. et al., case number 1:18-cv-06133, in the U.S District Court for the Northern District of Illinois.

--Additional reporting by Suzanne Monyak. Editing by Orlando Lorenzo.