

## 'Contradictory' Claims Can't Stand In \$100M IP Dispute: Judge

By **Shayna Posses**

Law360 (March 20, 2019, 8:40 PM EDT) -- An Illinois federal judge found some of the allegations in a \$100 million trade secrets fight lacking Wednesday, saying a company that helps data centers retain uninterrupted power during outages offers "contradictory and confusing" claims about a private equity-backed rival's purported misappropriation.

While many of LiiON LLC's claims hold up at this stage of the litigation, allegations that onetime collaborator-turned rival Vertiv Group Corp. shadily snagged the energy-solutions company's confidential information aren't up to snuff, U.S. District Judge Ronald A. Guzmán concluded.

The claims don't make sense in the context of LiiON's admission that it shared technological details and other secret information with Vertiv predecessor Emerson Network Power after they reached a non-disclosure agreement, the judge held.

"Plaintiff's allegation that 'defendants ... attained these trade secrets [from] plaintiff ... in violation of the Trade Secrets Act, and in breach of their mutual NDA,' simply makes no sense given that plaintiff alleges it only reveals confidential information pursuant to an NDA and entered into one with Vertiv," Judge Guzmán said.

LiiON tried to defend the claims by pointing to assertions that Vertiv used "unknown means" to misappropriate its rival's trade secrets because it "knew them to be secret" and proceeded to use the information in its own products, as well as pass the details along to competitor Samsung, according to the opinion.

The judge wasn't impressed, saying, "Plaintiff's allegation that Vertiv misappropriated trade secrets 'because they knew them to be secret' is not only nonsensical but fails to provide any facts in support; plaintiff cites no facts shoring up its vague assertions that Vertiv 'discovered the trade secrets through unknown means.'"

Still, Judge Guzmán held, LiiON raises valid trade secret claims relating to Vertiv's purported use of its information without permission, in breach of the NDA. Thus, he partially granted the dismissal motion and counseled LiiON to rework the proposed amended complaint it floated last week to address his concerns.

LiiON's business centers around providing uninterruptible power systems that keep data centers running during outages until their back-up generators kick in. Years of work went into developing a more cost-effective system that relies on lithium ions, which the company perfected in January 2013, according to LiiON.

The company's relationship with Vertiv started in May 2013 when it sent a battery prototype to Emerson, leading to the formation of a joint venture wherein the latter company was to sell LiiON's technology to data centers, court filings said.

The parties reached an NDA in July 2014, at which point, LiiON says, it provided a wealth of information to Vertiv, including sharing its software and providing confidential information about its proprietary technology.

However, LiiON alleges, Vertiv bought Emerson in July 2016, and towards the end of 2017, the company started cancelling orders with its joint venture partner. Vertiv then announced the expansion of its lithium-based product line, selling items that used LiiON's technology without permission and without paying royalties, according to the plaintiff.

LiiON **filed suit** in September, alleging violations of the Illinois Trade Secrets Act and the Defend Trade Secrets Act, as well as breach of the NDA.

Vertiv fought back with a dismissal motion, but for the most part, Judge Guzmán wasn't swayed Wednesday, noting that some of the company's concerns aren't appropriate to address at this point in the proceedings.

For instance, Vertiv claimed that LiiON's purported trade secrets are too broad and were publicly disclosed in the company's patent applications. The judge, however, held that LiiON's allegations sufficed to let Vertiv know what it was accused of stealing and that any questions about whether the information constituted trade secrets shouldn't be answered right now.

LiiON also adequately lays out its unauthorized use and breach of contract claims, the judge noted. But the misappropriation claims are a different story, he held, saying the company can't allege improper acquisition when it willingly provided the information.

In the end, he partially granted Vertiv's dismissal motion and rejected LiiON's request to file its second amended complaint, telling the company to make changes based on his ruling and try again.

The order didn't address LiiON's efforts to dismiss Vertiv's counterclaims. LiiON **told the court** last month that some of the allegations were too vague and others were unnecessary because they involved issues that were already being litigated through the complaint.

Representatives for the parties didn't immediately return requests for comment Wednesday.

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

Vertiv is represented by J. Erik Connolly, Nicole E. Wrigley and Kristen-Elise F. DePizzo 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 Michael Phillis and Lauren Berg. Editing by Connor Relyea.