

Raytheon Can't Block BAE From Sharing Tank Sight Design

By **Nadia Dreid**

Law360 (March 19, 2019, 9:50 PM EDT) -- Raytheon can't get a preliminary injunction in its intellectual property suit against BAE Systems over the design of a tank sighting system, a Virginia federal judge ruled Tuesday, adding that the companies would be better off settling their differences out of court.

U.S. District Judge Leonie M. Brinkema told the companies Tuesday that courts dole out preliminary injunctions conservatively, and only when the party requesting one is very likely to succeed on the merits of its arguments, which she said was not the case in the current dispute.

"We don't give out injunctions willy nilly," Judge Brinkema told the court Tuesday. "I'm not saying it's a case that is meritless ... but I'm not at all convinced there is enough evidence before the court for it to succeed on the merits."

Ultimately unconvinced that the dimensions of the technology could be considered a trade secret in this case, Judge Brinkema denied the motion for a preliminary injunction.

Raytheon slapped BAE with a suit in early March, accusing its rival and sometimes business partner of asking Raytheon to design a tank sighting system, then taking the plans Raytheon says it spent a year and millions of dollars building to DRS Network & Imaging Systems for a second opinion.

Judge Brinkema called the case against DRS, also named in the suit, "very, very, very, very weak," saying that Raytheon's argument that the company "should have known" the information BAE handed it was privileged didn't hold water.

BAE was pursuing a U.S. Army contract for mobile protected firepower vehicle tanks, according to the suit, a lighter version of the traditional tank that can be more easily shipped by air. But creating these lighter tanks posed the engineering problem of fitting all the same technology into a smaller space. In the case for which BAE solicited Raytheon, it wanted a sighting system could be squeezed into a smaller gun turret.

After winning the contract, the suit claims, BAE sent out a revised request for proposals in December, this time extending the request to DRS as well as Raytheon. But the new proposal included the work Raytheon had already done, including important trade secrets, Raytheon said.

BAE's attorney pushed back against the allegations, telling Judge Brinkema that Raytheon's final

proposal was the result of collaboration with BAE engineers because its first attempt missed the mark. Raytheon's first proposed system wasn't small enough to fit the specifications BAE had given it, attorney Mark Supko of Crowell & Moring LLP told the court.

Supko argued that Raytheon should not have had any expectation that the technology would remain under wraps, because BAE solicited the proposal for use in tanks it was contracted to provide to the U.S. Army, which would have license to share any information about the machinery's design it wanted to.

"This was a cooperative effort that ultimately goes to the government with unlimited rights," Supko said. "Raytheon never could have contemplated this would be a trade secret."

Judge Brinkema commended Gregory Lantier of Wilmer Cutler Pickering Hale & Dorr LLP for his representation of Raytheon and for setting a respectable tone in the litigation between the two companies that often collaborate.

Since they will likely work together in the future, the judge said, she encouraged them to use that spirit to settle their differences out of court, adding that using judicial resources on such a dispute wasn't in the public interest.

"See what you can work out among yourselves," Judge Brinkema said. "That's the best way in these cases."

Counsel for Raytheon and BAE Systems did not respond to requests for comment. Counsel for DRS Network declined to comment.

Raytheon is represented by Gregory Hayes Lantier of Wilmer Cutler Pickering Hale & Dorr LLP.

BAE Systems is represented by Mark Supko and Michael Harry Jacobs of Crowell & Moring LLP.

DRS Network is represented by Daniel Edward Chudd of Morrison & Foerster LLP.

The suit is Raytheon Company v. BAE Systems, Inc. et al, case number 1:19-cv-00251 in the U.S. District Court for the Eastern District of Virginia.

--Editing by Peter Rozovsky.

Correction: A previous version of this article named Michael Jacobs as the attorney who represented BAE Systems before the court Tuesday. That attorney was Mark Supko. The error has been corrected.